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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,477	08/31/2001	Satoru Tange	SHC0144	1533

7590 07/21/2003
MICHAEL S. GZYBOWSKI
BUTZEL LONG
350 SOUTH MAIN STREET
SUITE 300
ANN ARBOR, MI 48104

EXAMINER

AFTERGUT, JEFF H

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 07/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,477

Applicant(s)

TANGE, SATORU

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 16, the applicant recites that the thermoplastic fibers of the second web are "individualized". As the term "individualized" is not art recognized, one would have been led to look to the specification for meaning of the same. As defined in the specification in the sentence bridging pages 5 and 6:

"In the preferred upper layer 2, the fibers 6 are fused to each other at bond areas 4 but are individualized between bond areas 4 such that they are neither fused nor mechanically entangled tightly with each other." (emphasis added).

Clearly, then, the individualizing of the fibers was meant that the fibers were neither fused nor mechanically entangled tightly with each other in the regions between the bonded and/or fused zones. In claim 6, newly added, the applicant recites that the "individualized fibers are neither fused nor mechanically entangled tightly with each other between the discrete areas" where the webs were joined. The applicant is advised that if claim 6 is to be understood to be further defining as to the meaning of "individualizing" then the scope of claim 1 is unclear as it cannot be ascertained what applicant means by "individualizing" in claim 1 (in other words. Claim 1 must be defining the meaning of the term "individualizing" to be something different from "individualized fibers are neither fused nor mechanically entangled tightly with each other between the discrete areas" because claim 6 defined this and all dependent claims are deemed to

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be further limiting of the independent claim). It is believed that claim 6 is not further limiting but is rather defining what was meant by "individualized" and it is believed that applicant should cancel claim 6 and incorporate the definition of "individualized" into claim 1.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ness in view of Sisson (newly cited) optionally further taken with Austin et al.

Ness is cited for the same reasons as previously presented in paper no. 8, paragraph 5 and applicant is referred to the same for a complete discussion of the same. the applicant takes the position that a nonwoven web in Ness which is "less easily extensible than said elastic member" and which has "less elastic recovery than said elastic" has elastic recovery and therefore does not meet the requirements of the claim as being "capable of inelastic extension". The applicant essentially is arguing that the included materials which had some degree of elastic recovery, just that the elastic recovery was less than the recovery of the elastic material and thus does not meet the requirements of the claims to a material which is capable of inelastic extension. Applicant is advised that the reference appears to have suggested that the nonwoven materials for the substrate would have included orientable materials (elongatable) which were inelastic (inelastic nonwoven webs would have certainly have had "less elastic recovery" than the elastic webs therein, i.e. they would have had no elastic recovery). It should be noted that in Ness the purpose of the substrate web therein was to facilitate the formation of puckering in the finished assembly. The applicant is advised that those skilled in the art would have known what kind of nonwoven

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materials would have been useful for the materials which were less extensible than the elastic webs when making the puckered web. The reference to Sisson suggested suitable materials.

Sisson suggested that it was known to intermittently bond a nonwoven of elastic filaments to a nonwoven of inelastic but elongatable filaments. The reference to Sisson suggested that those skilled in the art would have bonded the nonwoven elastic web 24 with the nonelastic web 22 at cross over points 26 wherein the bonding would have been at discrete locations, see Figure 1. The reference suggested that after formation one skilled in the art would have stretched the web wherein the nonelastic web would have been elongated and oriented as depicted in Figure 2. after retraction of the elastic (contraction) subsequent to elongation, the inelastic filaments 22 loop, bulk and bunch up. See Figure 3, column 13, lines 37-column 14, line 14. the applicant is advised that one viewing Ness would have understood that the nonwoven materials of Sisson would have been useful in the operation as puckering was desired in the finished assembly. Note that the filament web of Sisson is clearly formed of inelastic filaments which are elongatable within the meaning of the term "capable of inelastic extension". Additionally, note that the reference to Sisson suggested that the bonding between the layers would have been discontinuous and/or patterned, see column 30, lines 19-24. the reference additionally suggested that two nonwoven layers would have been disposed upon either side of the elastic web, see column 35, line 67-column 36, line 28. as the reference to Ness suggested the use of nonwoven webs in association with an elastic web which was stretched and then allowed to recover to form a puckered assembly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the nonwoven web of Sisson in the process of Ness for making a textured and puckered elastic composite web.

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While the reference to Sisson appears to suggest that the filaments would have puckered between the bonds formed between the elastic web and the inelastic web wherein one would have provided two inelastic layers on either side of the elastic web, the reference failed to expressly suggest that these layers were different in their properties. The reference to Austin clearly expressed the same as applicant is referred to paper no. 8 for a description of the same. it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ plural webs on either side of an elastic web (to sandwich the elastic there between) wherein the webs were provided with different characteristics in order to attain none but the desired effects as bonding webs on either side was known as suggested by Sisson (and one skilled in the art would have selected materials useful to achieve the desired characteristics in the finished assembly) and the use of different webs on each side of the elastic was known as suggested by Austin et al.

With regard to the individualizing of the filaments, the reference to Sisson clearly suggested the individualization of the inelastic filaments which were not bonded to the elastic web at the cross over points. It should be noted that Ness suggested the removal of the longitudinally disposed bonding between the elastic and the inelastic materials therein (see column 5, lines 33-37).

Response to Arguments

5. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection.

The applicant argues that Ness included elastic webs for the substrate, the only requirement being that they must be less elastic than the elastic layer of the composite. The

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applicant is advised that the description in Ness, as discussed above, was generic to both less elastic nonwoven webs and inelastic nonwoven webs. Additionally, the reference desired the puckering of the finished assembly once the assembly was contracted. The reference to Sisson clearly suggested the puckering would have been facilitated with the use of nonwoven materials which were inelastic but elongatable. The use of such materials in the operation of Ness would have been not only suitable but would have been desirable. As previously noted, practicing the invention with the same materials as recited and performing the same operations would have intrinsically resulted in the formation of individualization of the fibers in the assembly. The applicant is advised that those skilled in the art would have readily appreciated the desirability of assembling the layers in the manner claimed and that the processing wherein one stretched the elongatable but inelastic web would have resulted in the individualization of the fibers therein as well as the elongation of the same to impart the desired hand and feel to the assembly.

The applicant argues that the reference to Austin included bonds B which were between the filaments, and that these filaments were not broken in the stretching and elongating operation. While these claims do not exclude retaining the bonds B in the finished assembly, the reference to Sisson has been cited which clearly suggested that those skilled in the art would have stretched the filaments between the bonds wherein the filaments would have been elongated and puffed up (puckered) between the bonds.

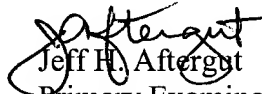
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 703-308-2069. The examiner can normally be reached on Monday-Friday 6:30-3:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
July 16, 2003